

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN BROWN,

Plaintiff,

v.

TAKEUCHI MFG. CO. (U.S.),
LTD., et al.,

Defendants.

No. 2:21-cv-00392-JAM-DMC

**ORDER GRANTING UNITED RENTALS'
MOTION TO DISMISS AND GRANTING
IN PART AND DENYING IN PART
TAKEUCHI'S MOTION TO DISMISS**

Before the Court are United Rentals (North America), Inc.'s ("United Rentals") motion to dismiss and Takeuchi Mfg. Co. (U.S.) Ltd.'s ("Takeuchi") motion to dismiss. Mot. to Dismiss by United Rentals ("United Rentals Mot."), ECF No. 31-1; Mot. to Dismiss by Takeuchi ("Takeuchi Mot."), ECF No. 32-1.¹ Apparently construing each of Defendant's motions as two separate motions - one to dismiss and one to strike - John Brown ("Plaintiff") filed four opposition briefs. First Opp'n to United Rentals Mot., ECF No. 26

¹ These motions were determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearings were scheduled for March 1, 2022.

1 44; Second Opp'n to United Rentals Mot., ECF No. 45; First Opp'n
2 to Takeuchi Mot., ECF No. 46; Second Opp'n to Takeuchi Mot., ECF
3 No. 47.² United Rentals and Takeuchi each replied. United
4 Rentals Reply, ECF No. 48; Takeuchi Reply, ECF No. 50. For the
5 reasons set forth below, the Court grants United Rentals' motion
6 and grants in part and denies in part Takeuchi's motion.

7 I. BACKGROUND

8 As this is the second round of motions to dismiss in this
9 case, a recitation of the factual background is unnecessary.
10 That background is set forth extensively in the operative
11 complaint, the parties' briefings, and the Court's prior order.
12 See generally Order Granting Mots. to Dismiss ("Prior Order"),
13 ECF No. 23. The relevant procedural background is as follows: on
14 August 20, 2021, the Court granted United Rentals and Takeuchi's
15 first motions to dismiss. Id. On October 1, 2021, Plaintiff
16 filed a first amended complaint. See First Amended Complaint
17 ("FAC"), ECF No. 30. In Plaintiff's original complaint, he pled
18 eight causes of action, but in the FAC, he elected to keep only
19 four: (1) "strict products liability - failure to warn" against
20 both United Rentals and Takeuchi ("failure to warn claim"); (2)
21 "strict products liability - design defect" against Takeuchi
22 ("design defect claim"); (3) negligence against United Rentals
23 and Takeuchi; and (4) punitive damages against United Rentals and
24 Takeuchi. See generally FAC; see also Prior Order at 2 (listing
25

26 ² Plaintiff did not seek leave of the Court to file four
27 oppositions, and thereby violated the Court's standing order
28 which cautions the parties "against filing multiple briefs to
circumvent" the Court's page limits. Order re Filing
Requirements ("Order") at 1, ECF No. 4-2.

1 eight original causes of action). United Rentals and Takeuchi
2 now move again to dismiss. See generally United Rentals Mot.;
3 Takeuchi Mot.

4 II. OPINION

5 A. Legal Standard

6 A Rule 12(b)(6) motion challenges the complaint as not
7 alleging sufficient facts to state a claim for relief. Fed. R.
8 Civ. P. 12(b)(6). "To survive a motion to dismiss [under
9 12(b)(6)], a complaint must contain sufficient factual matter,
10 accepted as true, to state a claim for relief that is plausible
11 on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
12 (internal quotation marks and citation omitted). While
13 "detailed factual allegations" are unnecessary, the complaint
14 must allege more than "[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements."

16 Id. In considering a motion to dismiss for failure to state a
17 claim, the court generally accepts as true the allegations in
18 the complaint, construes the pleading in the light most
19 favorable to the party opposing the motion, and resolves all
20 doubts in the pleader's favor. Lazy Y Ranch Ltd. v. Behrens,
21 546 F.3d 580, 588 (9th Cir. 2008). "In sum, for a complaint to
22 survive a motion to dismiss, the non-conclusory 'factual
23 content,' and reasonable inferences from that content, must be
24 plausibly suggestive of a claim entitling the plaintiff to
25 relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir.
26 2009).

27 B. Analysis: United Rentals Motion

28 United Rentals moves to dismiss the first cause of action

1 for failure to warn and the fourth cause of action for punitive
2 damages and to strike the punitive damages request in the prayer
3 for relief. United Rentals Mot. at 2, 6. The Court previously
4 dismissed these causes of action but granted Plaintiff leave to
5 amend. Prior Order at 12.

6 1. Failure to Warn

7 To adequately plead a strict liability claim under a failure
8 to warn theory, plaintiff "must include factual allegations that
9 explain how the subject warning is inadequate." Lucas v. City of
10 Visalia, 726 F.Supp.2d 1149, 1156 n.1 (E.D. Cal. 2010) (emphasis
11 in original). United Rentals contends the FAC fails to provide
12 such allegations. United Rentals Mot. at 2-3. The Court agrees.
13 The only allegations as to the failure to warn claim against
14 United Rentals are as follows: while owned by United Rentals and
15 prior to delivery to Plaintiff, the warnings on the TB230
16 excavator "became missing, illegible or damaged." FAC ¶ 26.
17 Though the manufacturer's warning stickers were affixed to the
18 excavator at the time of rental, they "did not comply in either
19 color or size with standard regulations and recommendations for
20 warning the consumer of potential dangers of the kind that caused
21 Plaintiff's injury" and "did not match warnings in [Takeuchi's]
22 operating manual." Id. ¶¶ 25, 42, 44, 89.

23 This is insufficient under Lucas because it does not answer
24 any of the "how" questions. 726 F.Supp.2d at 1156 n.1. For
25 instance, how were the warnings insufficient to warn Plaintiff
26 that he might topple the excavator over if he operated it on a
27 slope? How were the warnings on the excavator out of compliance
28 with standard regulations? How did they fail to match warnings

1 in Takeuchi's operating manual?

2 Nor does Plaintiff's argument that the Court must consider
3 the complaint in its entirety when evaluating a Rule 12(b)(6)
4 motion save this claim from dismissal. Second Opp'n to United
5 Rentals at 9-10. To determine whether Plaintiff plausibly
6 alleged a failure to warn claim against United Rentals, the Court
7 reviewed the FAC under the familiar 12(b)(6) standard to which
8 Plaintiff recites. He has not. Accordingly, this claim is
9 dismissed.

10 Plaintiff requests leave to amend. Second Opp'n to United
11 Rentals at 12. "Dismissal with prejudice and without leave to
12 amend is not appropriate unless it is clear . . . that the
13 complaint could not be saved by amendment." Eminence Cap., LLC
14 v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (internal
15 citation omitted). The Court finds that further amendment would
16 be futile and denies Plaintiff a third opportunity to properly
17 plead this claim.

18 2. Punitive Damages

19 United Rentals also asks the Court to dismiss the fourth
20 cause of action for punitive damages and strike the punitive
21 damages request from the prayer for relief. United Rentals Mot.
22 at 3-5. United Rentals first contends that in repleading his
23 punitive damages claim, Plaintiff ignored this Court's prior
24 holding that Plaintiff waived opposition to Defendant's College
25 Hospital Inc. v. Superior Court, 24 Cal.4th 704 (1994) argument.
26 Id.; see also Prior Order at 10-11. However, United Rentals
27 provides no authority supporting its position that the Court may
28 grant its motion on these grounds alone, particularly given the

1 Court granted Plaintiff leave to amend his punitive damages
2 claim. See generally United Rentals Mot. Likewise, United
3 Rentals does not bring forward any binding authority in support
4 of its second argument that punitive damages cannot be brought as
5 a standalone claim. Id. at 3 (citing to Rivercard, LLC v. Post
6 Oak Productions, Inc., No. 2:12-CV-1150 JCM (CWH), 2013 WL
7 1908315, at *5 (D. Nev. May 6, 2013) and Cohen v. Office Depot,
8 Inc., 184 F.3d 1292, 1297 (11th Cir. 1999)). The one Ninth
9 Circuit case United Rentals does cite to - Audette v. Int'l
10 Longshoremen's & Warehousemen's Union, 195 F.3d 1107, 1111 n.2
11 (9th Cir. 1999) - does not discuss a punitive damages claim at
12 all. United Rentals Mot. at 4. Thus, United Rentals fails to
13 show dismissal is warranted on either of these grounds.

14 However, United Rentals' final argument that Plaintiff did
15 not plead sufficient facts for the Court to plausibly infer
16 oppression, fraud, or malice has merit. United Rentals Mot. at
17 4-5. As this Court previously explained: "California law
18 provides '[i]n an action for the breach of an obligation not
19 arising from contract, where it is proven by clear and convincing
20 evidence that the defendant has been guilty of oppression, fraud,
21 or malice, the plaintiff, in addition to the actual damages, may
22 recover damages for the sake of example and by way of punishing
23 the defendant.' Cal. Civ. Code § 3294(a). 'Malice' is defined
24 as 'conduct which is intended by the defendant to cause injury to
25 the plaintiff or despicable conduct which is carried on by the
26 defendant with a willful and conscious disregard of the rights or
27 safety of others.' Id. § 3294(c)(1). 'Oppression' is defined as
28 'despicable conduct that subjects a person to cruel and unjust

1 hardship in conscious disregard of that person's rights.' Id.
2 § 3294(c)(2). 'Fraud' is defined as 'an intentional
3 misrepresentation, deceit, or concealment of a material fact
4 known to the defendant with the intention on the part of the
5 defendant of thereby depriving a person of property or legal
6 rights or otherwise causing injury.' Id. § 3294(c)(3)." Prior
7 Order at 10. "Punitive damages are never awarded as a matter of
8 right, are disfavored by the law, and should be granted with the
9 greatest of caution and only in the clearest of cases." Yeager
10 v. Corrections Corporation of America, 1:12-cv-00162 AWI JLT,
11 2012 WL 1067209, at *4 (E.D. Cal. March 28, 2012) (internal
12 citations omitted). Thus, California district courts have
13 dismissed a punitive damages claim when a plaintiff fails to
14 provide any factual basis supporting a finding of malice, fraud
15 or oppression. See e.g. Kinkade v. Trojan Express LLC, No. SACV
16 08-1362 AG (ANx), 2009 WL 799390, at *5 (C.D. Cal. March 23,
17 2009) ("Simply pleading the terms 'oppression, fraud, and
18 malice,' without alleging sufficient facts, is conclusory and
19 does not in itself support a punitive award . . . because
20 Plaintiffs do not sufficiently plead oppression, fraud, or
21 malice, the Complaint does not support a prayer for punitive
22 damages.").

23 Here, there are no factual allegations to support the
24 element of oppression, fraud, or malice. See generally FAC. Nor
25 does Plaintiff bring forward any facts in opposition from which
26 the Court could infer oppression, fraud, or malice. Accordingly,
27 the Court dismisses the fourth punitive damages claim and strikes
28 the punitive damages request from the prayer for relief. See

1 Kinkade, 2009 WL 799390, at *5 (striking punitive damages request
2 for failure to sufficiently plead oppression, fraud, or malice).

3 Further, the Court finds dismissal with prejudice is
4 appropriate. See Eminence Cap., LLC, 316 F.3d at 1052. First,
5 Plaintiff has already amended his complaint. See FAC. Second,
6 Plaintiff had the opportunity in opposition to proffer any
7 additional facts that might convince the Court he could plausibly
8 allege malice, fraud, or oppression. He failed to do so. Any
9 further amendment would be futile.

10 C. Analysis: Takeuchi Motion

11 Takeuchi seeks to dismiss all claims in the FAC or
12 alternatively, only the fourth cause of action for punitive
13 damages. Takeuchi Mot. at 2.

14 1. Punitive Damages

15 The standard for punitive damages claims is set forth
16 above. See also Prior Order at 10. Takeuchi argues
17 "Plaintiff's punitive damage allegations are nothing more than
18 boilerplate buzzwords, devoid of any facts." Takeuchi Mot. at
19 4. The Court agrees. Plaintiff's allegations at paragraphs 96-
20 102 regarding Takeuchi's purportedly despicable conduct are
21 conclusory. As such, the Court cannot infer oppression, fraud,
22 or malice from these allegations.

23 Nor does paragraph 109 of the FAC alter the above analysis.
24 That paragraph states: "Punitive damages meet the plausibility
25 standard of pleadings because through discovery Plaintiff will
26 prove that Defendants already knew that this machine toppled over
27 at a specific degree of tilt, and that the company concealed
28 those documents and continued advertising the product as industry

1 leading and safe." In federal court, Plaintiff cannot wait until
2 discovery to provide the Court with facts supporting his claim;
3 he must set forth sufficient facts in his complaint to state a
4 plausible claim. Iqbal, 556 U.S. at 678. Because he failed to do
5 so, Plaintiff's punitive damages cause of action is dismissed and
6 his corresponding request in the prayer for relief is stricken.

7 Dismissal with prejudice is appropriate. See Eminence Cap.,
8 LLC, 316 F.3d at 1052. As with his punitive damages claim
9 against United Rentals, Plaintiff had the opportunity in
10 opposition to proffer any additional facts that might convince
11 the Court he could plausibly allege malice, fraud, or oppression
12 against Takeuchi. See First Opp'n to Takeuchi Mot.; Second Opp'n
13 to Takeuchi Mot. He failed to do so. The Court thus finds
14 amendment would be futile.

15 2. Remaining Claims

16 In two short paragraphs tacked on to the final page of its
17 motion, Takeuchi makes the sweeping argument that the remaining
18 claims should be dismissed. Takeuchi Mot. at 6. Specifically,
19 Takeuchi takes issue with the "inconsistency in [Plaintiff's]
20 pleadings." Id. But inconsistency alone is not a ground for
21 dismissal because "Plaintiff may, of course, plead more than one
22 legal theory in the alternative, but should provide plausible
23 facts that support each theory." Coffen v. Home Depot U.S.A.
24 Inc., No. 16-cv-03302-PJH, 2016 WL 4719273, at *6 (N.D. Cal. Sep.
25 9, 2016). Thus, Takeuchi's motion itself fails to show dismissal
26 of the remaining claims is warranted.

27 Nevertheless, Takeuchi takes a second bite at the apple in
28 its reply, raising new arguments as to why the remaining claims

1 should be dismissed. Takeuchi Reply at 2-5. This, however, is
2 improper. Courts in the Ninth Circuit generally decline to
3 consider new arguments or issues raised for the first time in
4 a reply brief. Cedano-Viera v. Ashcroft, 324 F.3d 1062, 1066 n.5
5 (9th Cir.2003) ("We decline to consider new issues raised for the
6 first time in a reply brief"); see also State of Nev. v. Watkins,
7 914 F.2d 1545, 1560 (9th Cir. 1990) ("[Parties] cannot raise a new
8 issue for the first time in their reply briefs"). The Court thus
9 declines to consider the new arguments raised by Takeuchi in its
10 reply.

11 Accordingly, the Court denies Takeuchi's motion as to the
12 remaining claims for failure to warn, design defect, and
13 negligence.

14 D. Sanctions

15 As an initial matter, the Court notes that in its prior
16 order, it issued sanctions against Plaintiff's counsel for
17 violating the Court's page limits. Prior Order at 12-13. Here
18 once again, Plaintiff's counsel violates the Court's standing
19 order. That order "cautions [parties] against filing multiple
20 briefs to circumvent" its page limits. Order re Filing
21 Requirements at 1. A violation of the Court's standing order
22 requires the offending counsel (not the client) to pay \$50.00
23 per page over the page limit to the Clerk of Court. Id.
24 Moreover, the Court did not consider arguments made past the
25 page limit. Id.

26 Plaintiff filed four opposition briefs. He filed two
27 oppositions to United Rentals' motion: the first was 8 pages,
28 the second was 8.5 pages. First Opp'n to United Rentals Mot.;

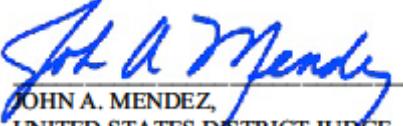
1 Second Opp'n to United Rentals Mot. This exceeds the Court's
2 page limit by 1.5 pages. Plaintiff's counsel must therefore
3 send a check payable to the Clerk for the Eastern District of
4 California for \$75.00 no later than seven days from the date of
5 this Order. Additionally, Plaintiff filed two oppositions to
6 Takeuchi's motion: the first was 7.5 pages, the second was 7
7 pages. First Opp'n to Takeuchi Mot.; Second Opp'n to Takeuchi
8 Mot. This did not exceed the Court's page limits.

9 Counsel for Defendant Takeuchi also violated the Court's
10 standing order. Takeuchi's reply was six pages, exceeding the
11 Court's page limit on reply memoranda by 1 page. See Takeuchi
12 Reply; see also Order re Filing Requirements at 1. Takeuchi's
13 counsel must therefore send a check payable to the Clerk for the
14 Eastern District of California for \$50.00 no later than seven
15 days from the date of this Order.

16 III. ORDER

17 For the reasons set forth above, the Court GRANTS United
18 Rentals' Motion and GRANTS IN PART and DENIES IN PART Takeuchi's
19 Motion to Dismiss. As to United Rentals, Plaintiff's first claim
20 for failure to warn is DISMISSED WITH PREJUDICE and as to both
21 Defendants, Plaintiff's fourth claim for punitive damages is
22 DISMISSED WITH PREJUDICE and the request for punitive damages in
23 the prayer for relief is STRICKEN. IT IS SO ORDERED.

24 Dated: April 21, 2022

25 
26 JOHN A. MENDEZ,
27 UNITED STATES DISTRICT JUDGE
28